ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

September 2016 Edition

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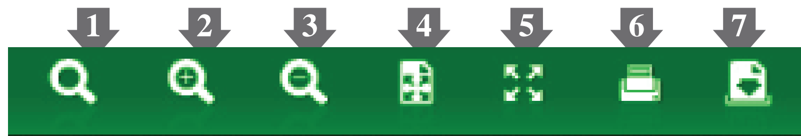

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FROM AC

It is with great sadness that we start this month's Newsletter with bad news.

One of the AC family, Rob Veal, lost his wife, life partner and best friend during September. They had been together for 45 years.

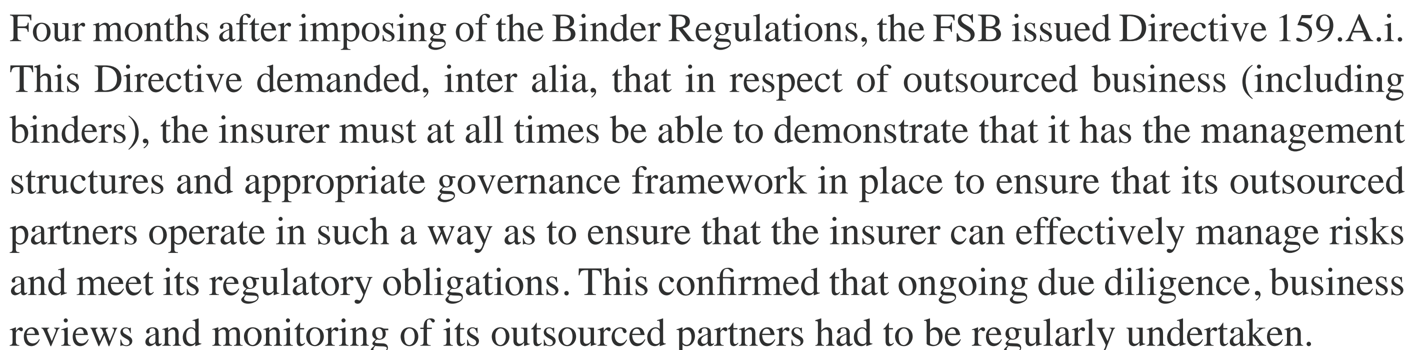
Our condolences to Rob and his family.

This will affect our delivery of services for a short while, but we would ask that you bear with us over this period. We will be in touch so that we can re-organise visits where needed just as soon as possible.

The practice is not always perfect nor speedy

Almost five years ago, the National Treasury published the amendment to the regulations of the Short-term Insurance Act relating to binders (Government Gazette dated 23 December 2011). It was clear from those regulations that any binder holder acts on behalf of and in the best interests of the Insurer in respect of business take-on, policy maintenance, renewals and/or the settling of claims. Moreover, the regulations clarified the responsibility assumed by insurers in regard to the manner by which a binder holder managed its business affairs. Regulation 6.3(1)(c) demands that a binder holder must have appropriate governance, risk management, internal controls and information technology systems in place to render the services under any binder agreement provided by the insurer.

Consequently, insurers are required to monitor their binder holders, not just in terms of binder performance, but also in respect of governance. Therefore, a programme of due diligence, reviews and monitoring of binder holders must be in place prior to the insurer granting a binder and this must encompass regular reviews.



Four months after imposing of the Binder Regulations, the FSB issued Directive 159.A.i. This Directive demanded, inter alia, that in respect of outsourced business (including binders), the insurer must at all times be able to demonstrate that it has the management structures and appropriate governance framework in place to ensure that its outsourced partners operate in such a way as to ensure that the insurer can effectively manage risks and meet its regulatory obligations. This confirmed that ongoing due diligence, business reviews and monitoring of its outsourced partners had to be regularly undertaken.

During 2014, the FSB conducted a thematic review of binder agreements. The FSB's findings highlighted the fact that the regulations were not being adhered to by all insurers and they raised the following concerns:

1. Some binder agreements included provision for intermediary services;
2. It was not always clear what proportion of fees were linked to which particular type of function or activity, or how the fees had been calculated;
3. The management of conflicts of interest was generally not considered as part of the due diligence process prior to entering into a binder relationship;
4. The regulatory requirements relating to the sharing of data were not being adhered to;
5. There were significant disparities in the quality and effectiveness of the ongoing monitoring of existing binder arrangements; and
6. There was little to no evidence indicating that insurers were continuously assessing and/or addressing market conduct risks relating to the distribution and servicing of policies through binder mandates.

Overall, the findings of the thematic review illustrated that the manner in which some insurers managed their binder arrangement fell short of regulatory expectations and the FSB took great pains to point out that the absence of robust oversight processes increased the likelihood of insurers not being aware of the potential risks to customer outcomes.

The first three concerns above are clearly being addressed in the RDR, and in any event, most insurers have already considered and corrected their policies and procedures as necessary.

Not so, however, in respect of points 4, 5 and 6.

The last few months have seen a rapid move by insurers to attempt to address the concerns outlined in point 4. In fact, a number of binder holders have received communications from their principals requesting certain information, which only a few have been able to accommodate.

The FSB is determined to ensure that the industry initiates a data exchange framework which eliminates dual capturing of information by or on behalf of the insurer. As a consequence, the South African Insurance Association (SAIA) is in the process of conducting a survey among its members to ascertain how this desire of the FSB can best be accommodated. As part of the industry consultative process, SAIA has also invited the FIA and SAUMA to provide input if they so wish.

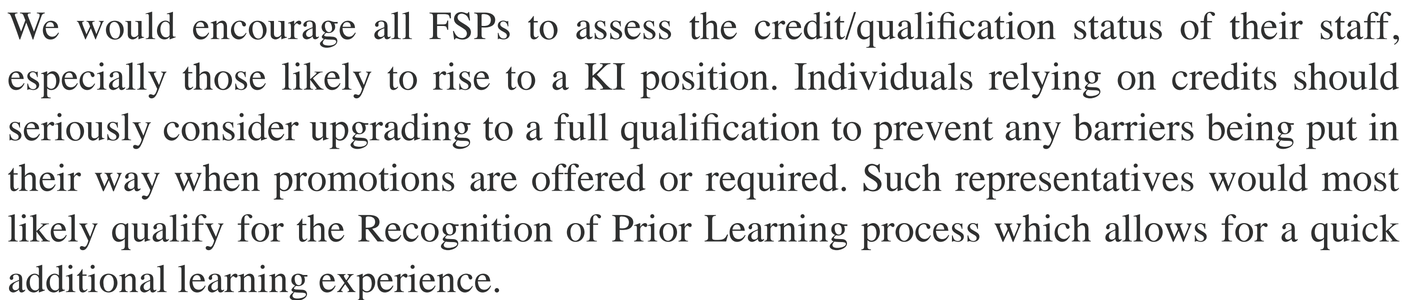
This leaves points 5 and 6 above still to be addressed, which requirements are reinforced in terms of Board Notice 158 of 2014. Not all insurers have the capacity or the resources to undertake comprehensive due diligence tests or carry out regular governance reviews of its binder holders, but this is an essential task if an insurer makes use of an outsourced business model.

Time will tell how the insurers intend to manage their responsibilities going forward.

Also see a related article under "From SAIA" dealing with requests for information.

Transitional Representatives becoming Key Individuals

Previously we wrote about the correction to the rules around a representative becoming a Key Individual (KI), specifically the need to have an approved qualification before KI appointment can be approved since credits obtained as a transitional representative would no longer be acceptable. We have seen this start to become a practical issue where approved qualifications are not in place.



We would encourage all FSPs to assess the credit/qualification status of their staff, especially those likely to rise to a KI position. Individuals relying on credits should seriously consider upgrading to a full qualification to prevent any barriers being put in their way when promotions are offered or required. Such representatives would most likely qualify for the Recognition of Prior Learning process which allows for a quick additional learning experience.

The importance of following an effective take-on process for Representatives

We recently had a scenario of an FSP not obtaining all of the relevant documents from a Representative before appointing them to a position. The individual didn’t supply the FSP5, RE certificate or proof of qualifications after two weeks at the FSP and was dismissed. The subsequent problem was that he had, in those first two weeks, provided quotes and terms to clients which were not inside his or the FSP’s mandate from their insurer. He had also made unsubstantiated statements (in writing!) when contacting clients. One quote was actually taken up but thankfully the insurer and FSP have agreed to the terms presented by the individual. A clear and ringing reminder to obtain DOFAs etc. during the interview stage so the appointment as a representative is trouble and stress free.

Another example, although less problematic, was seen during a monitoring visit where a KI expressed the need for a new staff member to be appointed as a representative. When asked whether this person had previously been appointed or would need to be under supervision, the KI had to ask another staff member to establish what her history was. While the option for supervision may be acceptable to the FSP, there could have been other issues that would impact on the ability to appoint this individual that the KI should have been aware of before making an offer of employment.

What information can you share with people other than the insured?

A client of ours recently requested guidance on the following query:

> ***"When handling claims, often a person other than the policyholder will call in to request information on the progress of the claim, e.g. the policyholder's spouse, a family member, secretary, etc. What are our obligations in terms of providing such information? We don't want to hinder our claims service but we also don't want to be at risk when sharing information to a person other than the policyholder."***

In light of the approaching POPI Act and to avoid any chance of unauthorised transferring of client information, we recommend that consent be obtained from the policyholder before sharing any information with another person. The FAIS General Code of Conduct already protects clients against the disclosure of their confidential information without their written consent - Section 3 (3).

There are a few ways in which you can address this:

- Create a consent form as part of the claim registration process, in which the policyholder states which persons, if any, are authorised to receive information on their behalf in relation to claims.
- To address this matter on a broader level, amend your client Service Level Agreement to incorporate this consent for all policy-related matters. Bear in mind that your SLA will then need to be completed and signed by the policyholder. All current SLAs can then be amended on renewal.

Client Service Level Agreements or consent forms should also define "confidential information". If you don't have such agreements, it may be practical to consider this sooner rather than later given the proposal in the Retail Distribution Review that will require advice fees to be agreed to in writing by clients.

With regards to policies noted as "FTRR&I", all noted persons would have access to policy information, however good sense and discretion needs to be applied in determining whether the person requesting information is a stakeholder, beneficiary or has an insurable interest.

Protection of Personal Information Act

This is the first of a series of articles about the Protection of Personal Information Act (POPI) which will be published in the Newsletter over the next few months. The intention is to assist you to familiarise yourself with the requirements so that once POPI comes into effect, you have a fairly comprehensive understanding of what needs to be done in order to comply.

Why POPI?

The right to privacy is protected by section 14 of the Constitution. This includes a person's right to control access to as well as the use of their personal information. The promulgation of POPI gives effect to this right and brings South Africa's data privacy laws in line with international standards.

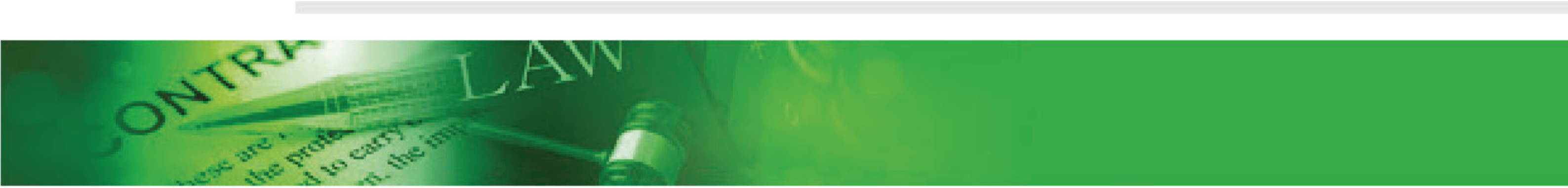
Although the Act has been promulgated, the majority of sections have yet to come into effect. Once the commencement date has been published, businesses will have a grace period in which to comply with the provisions. Having said this however, it is anticipated that the commencement date will be published in the government gazette before the end of 2016 and many businesses are already taking measures to prepare for the implementation of POPI.

Are you processing personal information?

POPI applies to any business that processes personal information in South Africa. It helps to firstly understand what is meant by "processing" and secondly what is "personal information".

Processing in broad terms includes any activity that involves personal information and includes:

1. Collecting personal information
2. Using the personal information
3. Storing the personal information
4. Archiving, destroying or indefinitely retaining personal information.



There are specific conditions contained within POPI which prescribe and limit how the processing of personal information may be carried out. In essence, if a business in South Africa is in possession of personal information, it is processing personal information and is required to comply with POPI.

Personal information is widely defined and basically includes any information relating to an identifiable natural person or to an identifiable juristic person. Personal information that has been de-identified or that relates to a deceased person is not subject to POPI. Remember POPI does not only apply to the processing of client information but also personal information relating to employees and suppliers.

It is important to note that POPI will apply to information that was collected prior to the commencement date of the Act. This is because POPI deals specifically with the processing of personal information regardless of when the information was collected.

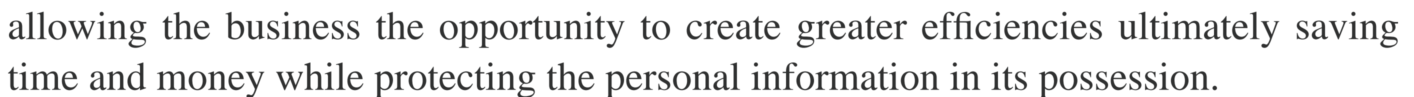
Why should you comply with POPI?

The obvious answer is that is limits the risk of fines, penalties and legal action that may be taken against you for non-compliance, however there are other advantages to complying with the requirements.

If you do business with international companies, often their own data protection laws require that they only transact with businesses in countries that have similar or stricter data protection laws. You may need to demonstrate that you have the necessary policies and procedures to comply with the POPI requirements in order to do business with international companies as well as some South African companies that will seek assurance that you do comply.

Breaches in the protection of personal information can cause significant reputational damage to companies. Implementing the appropriate policies and procedures to limit the risk of non-compliance could ultimately protect your reputation as well.

The proper implementation of POPI will require businesses to thoroughly re-examine their existing operating procedures. In doing so, inefficiencies are often identified



allowing the business the opportunity to create greater efficiencies ultimately saving time and money while protecting the personal information in its possession.

Who is processing the information?

Within the financial services industry, the outsourcing of business activities is common practice. An important consideration is that in terms of POPI, the company that outsourced the business activity is still processing the personal information and is the responsible party. The responsible party is the company that needs the personal information for a specific purpose and decides how the personal information will be processed to achieve that purpose.

The responsible party remains liable in the event that the party to whom the business activity was outsourced (the operator) breaches the provisions of POPI. Any company entering into a contractual relationship that includes the outsourcing of a business activity that involves the processing of personal information should be careful to ensure that the operator indemnifies the responsible party from losses resulting from a breach of the provisions of POPI.

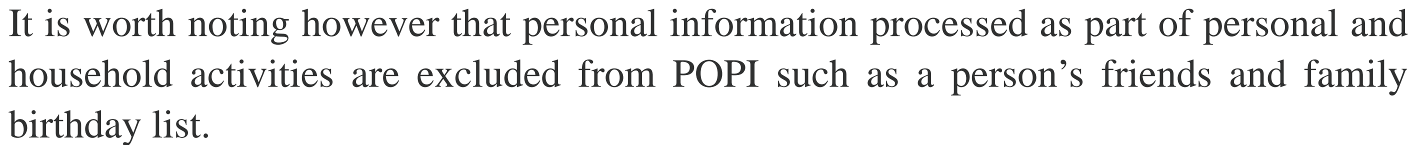
Is the processing done in South Africa?

POPI will always apply where the responsible party is domiciled in South Africa even if the head office or holding company is based outside of South Africa. Where a South African company stores personal information relating to its clients or employees on a server outside of South Africa, the provisions of POPI will apply because the company is domiciled in South Africa.

If a company outside of South Africa collects information using a company within South Africa (an operator), the provisions of POPI will apply because the means of the collecting the personal information takes place within South Africa.

When does POPI not apply?

A number of general as well as specific exclusions exist within POPI and will be discussed in later articles as we work through the various conditions contained within POPI.



It is worth noting however that personal information processed as part of personal and household activities are excluded from POPI such as a person's friends and family birthday list.

As indicated above, de-identified information is also excluded from POPI. De-identified information is personal information that can no longer be traced or linked back to a specific person. It requires the removal of the name and any other identifiers.

It must not be possible to re-identify the record in order for it be regarded as de-identified for POPI purposes. Businesses that wish to limit the ongoing POPI compliance requirements should consider the option of de-identifying personal information as soon as the possible once the purpose for collecting the personal information has been achieved. This is naturally subject to any other legal or statutory obligations they may have in terms of record retention.

Associated Compliance has developed a POPI gap analysis and monitoring tool to assist our clients to understand the POPI requirements and identify the action that they will need to take in order to comply with POPI. The tool will be ready for launch from 1 December 2016.

It is evident from the above that POPI applies to all businesses in South Africa. Although provision is made for a grace period for implementation, we have already seen instances where companies are being requested to provide evidence of their policies relating to POPI and the protection of data. We therefore recommend that you start spending time understanding and developing an implementation strategy to ensure that you are able to demonstrate compliance with POPI when the time comes.

FROM AC HAS

South Africa has a legacy of discrimination in relation to race, gender and disability and has denied access to opportunities for education, employment, promotion and wealth creation to the majority of South Africans in the past. The Employment Equity Act was passed to address this legacy and has two main objectives:

1. To ensure that our workplaces are free of discrimination; and
2. To ensure affirmative action measures are implemented to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workplace of a designated employer.

Since the initial promulgation of the Employment Equity Act, employers have been challenged to root out unfair discrimination and to transform the demographics of the workplace to be representative of the country's demographics, at all levels in the organisation. The Department of Labour has been critical of what it perceives to be a lack of progress by the corporate sector in transforming the workplace. It is therefore in the interests of all South Africans that equality is reached enabling a greater appreciation of the value of diversity across all our people. **This should be a priority for all South African companies - whether we are legally required to or not.**

Over the past 12 months, I have walked a path with Associated Compliance who expressed a wish to voluntarily submit an annual Employment Equity Report (Associated Compliance is not deemed a designated employer, as stipulated in the Employment Equity Act, No. 55 of 1998) showing the company's commitment to transformation.

AC followed a five step plan:

1. We informed all our employees of AC's intention to comply with the Employment Equity reporting and called for nominees to be part of the Employment Equity committee;
2. We appointed an Employment Equity Manager;
3. We trained and educated the Employment Equity committee;
4. We developed an Employment Equity Plan which includes AC's intended Affirmative Action measures;
5. We will be submitting our EE reports to the Department of Labour during the reporting period which opens in October 2016 through to January 2017.

The above process is not complex and inexperience or unfamiliarity with Employment Equity should not be the obstacle that hinders you to implement this in your company. Yes, there are challenges:

- Finding employees to form part of the Employment Equity committee;
- Making time for between five to eight people to spend two or three hours once a month or six-week period to attend the Employment Equity meetings;
- Getting a senior manager in your company to dedicate time to yet another important matter;
- Being prepared for your employees to analyse your company's policies/ procedures and practices;
- Having an open mind to consider changing or implementing different practices.

But the benefits far outweigh the challenges! Any company aspires to be an "Employer of Choice" and would like to know that they have "preferred employer" status. We have found that by making the AC employees in the EE committee part of this process, we have empowered them and entrusted them with intimate knowledge of the gears that run the AC machine. Not only were the employees exposed to all the elements that make a company run, but they were also prompted to think differently about why certain policies and processes are in place. The employees were given the opportunity to explore alternative and new ways of making AC their "employer of choice". In addition

to the committee going through the steps of the implementation, other value-adding ideas – not directly related to employment equity – were raised and identified. What this process highlighted to us was that the value of the Employment Equity implementation was far reaching; way beyond what was initially intended.

The road is by no means at an end. We are looking forward to completing the final stages of this year's plan. We are excited to embrace and incorporate transformation and to explore the new challenges that were identified during this process.

AC HAS can also assist your company to implement Employment Equity. If you would like to enquire or receive more information,

email bronwynn@associatedcompliance.co.za | has@associatedcompliance.co.za.

FROM AC PROOFED

Are you using too many words?

Do you find yourself writing sentences that are far too long?

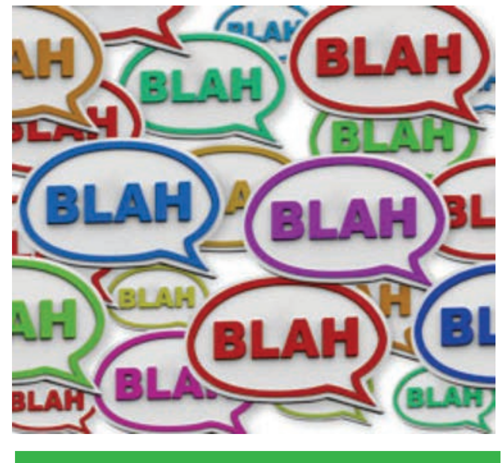
Have you ever re-read a sentence and struggled to finish it in one breath?

If so, you may be suffering from something called ***prolixity,*** or in layman's terms, ***wordiness.*** Wordiness is one of the most common writing mistakes and happens when you, either intentionally or unintentionally, use far too many words or unnecessarily complex or abstract words.

Wordiness is taking more words than necessary to make your point. It may take the form of redundant expressions or phrases. While it's true that longer expressions may be appropriate at times as a matter of style or to avoid ambiguity, some business

writers clutter their sentences and paragraphs with words, phrases, and expressions that needlessly distract the reader.

Here's an example of too many words being used to deliver a simple message.



> ***"Welcome to the new [company name] website. We have worked on improving the design and overall user experience, so you can navigate the site much easier and get quick access to what you are looking for. We welcome your feedback, so please email us at xxxx if you see a broken link, or feel that something should be reviewed or enhanced. We will do our best to refine your user experience."***

How about…?

> ***"We have improved our website design so it's easier and quicker for you to discover what you need. If you find any errors, or have any suggestions for our site, please email us."***

Consistent elimination of wordiness results in a stronger, more concise writing style that is easier to read and provides fewer opportunities for misinterpretation. In contrast, a wordy style makes reading laborious and will encourage skimming which will lead to inattention. Do you want the reader to carefully consider your message? If so, reduce wordiness to a minimum.

Tips to help you avoid wordiness in your writing:

Fillers

One way to control wordiness is to limit (or eliminate) the use of filler words. These words sneak in between relevant words and though they may sound good, they serve no purpose.

If you took out the word commonly in the phrase "It is commonly believed that…," the meaning would not change, and it would actually improve the sentence.

Redundancies

This tends to happen when writers try to describe something and overuse synonyms.

Take this sentence: "Mark is a funny, hilarious, and comical person." Here, three words that basically mean the same thing are used to describe Mark.

The second form of redundancy is where writers say the same thing many times, but in different ways.

Qualifiers

Qualifiers come directly before an adjective or adverb and are used to either increase or decrease the quality of the modified word. When every adjective or adverb is preceded by very, extremely, barely, or hardly, the qualifiers begin to lose their meaning. The use of one good word rather than two or three mediocre ones will instantly improve your writing.

For example, in the phrase "David is very cool," very is the qualifier. The overuse of such qualifiers can distract readers.

Qualified words can often be replaced by a single, more potent word. For example, "Kim is extremely angry" could be shortened to "Kim is furious".

Logorrhoea

This form of wordiness can be the most frustrating. Logorrhoea is the intentional use of long sentences or overly abstract wording. A little like verbal diarrhoea (it even sounds the same)!

> ***"Prior to my becoming a writer, I knew wordiness was an issue in writing, but it was only during the course of writing my articles that I realised the extent of the problem. At that point in time I began to see examples everywhere. In due course I noticed certain patterns, and subsequent to my realising this I compiled a list."***

Could become…

> ***"Before I became a writer, I knew wordiness was an issue, but only when I started writing did I realise how bad it was. I started to see examples everywhere and noticed patterns, and it helped me to write a list of these patterns."***

If you are guilty of this, you may want to put down the thesaurus and remember that writing is about conveying a message.

If your readers can't understand what you're saying, you should consider making your writing more reader friendly.

Total Word Count: 716

Could I have written this article with fewer words?

You tell me… Or, better still, please do not hesitate to make use of my services to assist you in eliminating the scourge of prolixity in business writing. (Only kidding!)

Kim Hatchuel

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FROM AC DEVELOP

Director development programme

Given the emerging need for our clients to understand and apply best corporate governance practices to their business due to changes and requirements in financial legislation, we have arranged with The Institute of Directors in Southern Africa NPC (IoDSA) to provide relevant corporate governance programmes designed for our clients to run in 2017. All we need is the interest of our clients to get the programme booked and dates set. The proposed programme, or snapshots as the IoDSA refers to each session, will be as follows:

Snapshot 1: *Introduction to corporate governance*

Snapshot 2: *The Board's role in setting strategy*

Snapshot 3: *The Board's role in managing risk*

Snapshot 4: *Governance frameworks and models*

Snapshot 5: *Roles and responsibilities of directors and conflicts of interest*

Snapshot 6: *Increasing Board effectiveness*

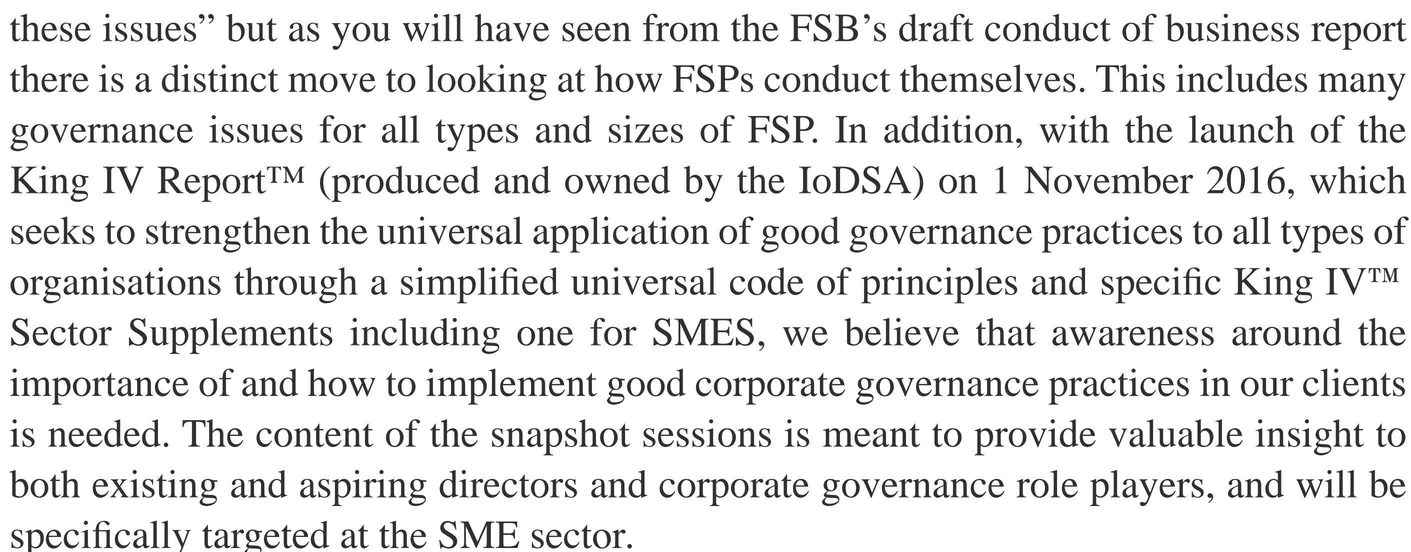
Snapshot 7: *The Board's role in sustainability, ethics and integrated reporting*

Snapshot 8: *Financial insights for non-financial managers*

Additional sessions, subject to demand, can also be arranged on the following topics:

- The journey to professional excellence - The Chartered Director (South Africa)® Designation
- IT Governance
- Responsible remuneration
- Mastering Chairmanship
- Secrets of being an effective company secretary

We realise that the initial reaction of many will be "we are too small to worry about



these issues” but as you will have seen from the FSB’s draft conduct of business report there is a distinct move to looking at how FSPs conduct themselves. This includes many governance issues for all types and sizes of FSP. In addition, with the launch of the King IV Report™ (produced and owned by the IoDSA) on 1 November 2016, which seeks to strengthen the universal application of good governance practices to all types of organisations through a simplified universal code of principles and specific King IV™ Sector Supplements including one for SMES, we believe that awareness around the importance of and how to implement good corporate governance practices in our clients is needed. The content of the snapshot sessions is meant to provide valuable insight to both existing and aspiring directors and corporate governance role players, and will be specifically targeted at the SME sector.

Do I need to attend all sessions in the year?

No, you can pick and choose those that are relevant to your own needs and in accordance with your time and budgetary constraints. However, we recommend that you aim to eventually attend all Snapshot sessions so as to receive an overall grounded foundation on corporate governance. The Snapshot sessions 2 and 3 set the core foundation and it is therefore recommended that these are at least done first before attending others in order to enjoy the full coverage and understanding of the content.

How long is each session?

Each session will run for two hours (from 09h00 to 11h00).

When will these sessions be run?

The eight Snapshot sessions will run from February to September 2017 and it is intended that this series will run annually.

What will each session cost?	This is very much dependent on the numbers attending. The cost per Snapshot session will range between R1,200 to R750 (excluding VAT) depending on the number of delegates attending the session, with the lower fee applicable if there are 16 or more delegates attending each session.

We would appreciate your feedback as to whether you see this proposal as being relevant to your company. Your visiting compliance officer will also start to seek your feedback as they see you over the next few months.

FROM THE FSB

Draft Regulation Amendments

Exemption of Juristic representatives from 13 (1) (c)

Notwithstanding the impression that the title of this exemption creates the intention is to allow for the collection of premium by a juristic representative of AN INSURER in their own name and into their own bank account.

The initial excitement by some who have been struggling to adhere to the implications on premium collection by their juristic representatives was short lived upon reading the actual draft as they do not see insurers readily appointing a host of juristic representatives to collect premiums when the FAIS activities are conducted via another FSP. Of course the Insurers might see this as an opportunity to force these juristic representatives to only use their products before they provide the authority.

The confusion for the client is increased given the need to trade as the insurer yet accept premium in the juristic rep's name. This would appear to be odd to any thinking client who will not appreciate the structures.

Can insurers reasonably monitor this authority without increasing costs which ultimately get passed on to the client?

Depending on the need for IGF (which is not addressed here as it is a Short-term Act matter), the risk to the client is potentially higher due to remoteness of the insurer from day to day controls.

Exemption on Audit Reports and Liquidity Requirements

This proposed change will allow Category I and IV FSPs that are collecting premium or funds under the authority of an insurer not to prepare the section 19(3) report each year.

However, a Category I FSP collecting short-term premiums with the required IGF in place is already exempt from this requirement. We see this as further evidence that the IGF will be falling away soon or replaced with more stringent standards allowing FSPs to collect premium.

The proposed amendment will also withdraw the need to maintain specific levels of liquid assets, which has been an issue for certain categories of FSP where their primary business is not insurance. This will be subject to an annual authority from the insurers involved, making the insurer responsible for monitoring solvency of their FSPs on an ongoing basis. The administration for insurers to manage will most likely be worse than any IGF renewal process and create a 'grey area' where the tests have not been done and yet premium needs to be collected.

A piece of this puzzle is missing and until we know what the RDR proposal on premium collection standards actually looks like, these changes cannot really be commented upon in a meaningful way.

Exemption from Section 13 of the FAIS General Code of Conduct

This proposes that category I and IV FSPs that act as underwriting managers can be exempted from having to maintain professional indemnity and fidelity cover subject to the insurer accepting responsibility for the actions of the UMA.

This mandate has to be reissued annually and submitted with the FSP's financial statements. Once again the insurers will be forced to check on their UMAs.

There is also the aspect of non-financial products and services being offered by the UMA and whether the insurers would want to accept responsibility for those as well. The risk to the client is probably minimal, unless you have an insurer failing which would mean that a client would potentially lose their protection, but based on initial discussions with UMAs we're unsure whether the insurer and UMA community will take advantage of this exemption.

Click here to download the draft for the above.

FSB FAIS Newsletter

The latest edition, number 21, has been released and can be downloaded here. A useful article within this edition is the rules around the booking of RE exams and people within your company responsible for this process should be given a copy.

They also deal with the topic of "FAIS credits" – useful for anyone still struggling with understanding what this term actually means and how credits and qualifications work.

Insurance regulatory seminar

Dates have been announced for this year's seminar. They are:

17 November @ Old Mutual Park, Pinelands Cape Town

28 and 29 November @ Alexander Forbes, West Street, Sandown Johannesburg

A workshop on Solvency Assessment & Management (SAM) will also be held at the following venues on the following dates:

18 November @ Old Mutual Park, Pinelands, Cape Town

22 November @ SA Reserve Bank, 370 Helen Joseph Street, Pretoria

Each event is a full day and will be provided free of charge. At the time of going to press bookings had not yet opened. We will of course attempt to attend on your behalf and report back in our final Newsletter of the year.

Third Party Cell Captives – the discussion has been opened up once more

An information request was issued by the FSB on 12 September. It requests information that has to be submitted by 31 October 2016, to: "assist the Registrar in assessing whether cell captive insurance business is conducted in accordance with the licensing conditions of the insurers and if cell arrangements appropriately:

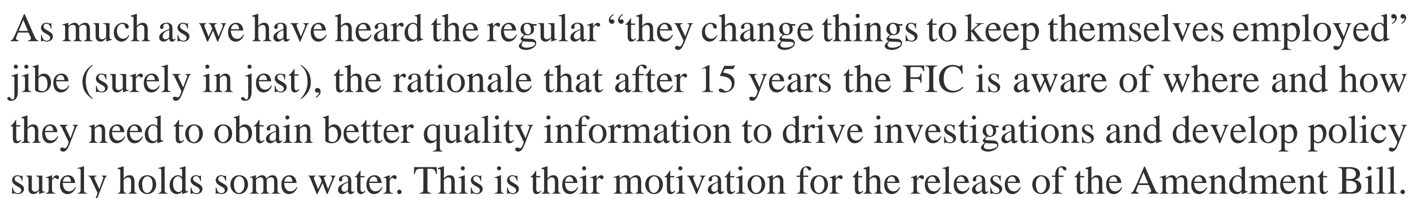
a. Manage the risks associated with cell structures
b. Manage conflicts of interest that may arise
c. Achieve fair outcomes for policyholders of the insurer."

The attachments provided do give us a few useful snippets of information, not least of which is a definition of "Affinity Business" and "Associate" in the context of relationships between cell owners, binder holders and any intermediary which can be found in Questions 1.6 and 5.1 respectively within Annexure A on the supplied annexures for completion which can be downloaded here along with the Information request itself here.

Maybe the long awaited amended regulations around cell captives will be with us during 2017?

FROM THE FIC

We also attended the Financial Intelligence Centre (FIC) Roadshow earlier in September. Given that the FIC Amendment Bill will be written into law imminently it is essential that everybody affected be up to date with the proposed changes and begin work on developing the new internal structures and controls.



As much as we have heard the regular "they change things to keep themselves employed" jibe (surely in jest), the rationale that after 15 years the FIC is aware of where and how they need to obtain better quality information to drive investigations and develop policy surely holds some water. This is their motivation for the release of the Amendment Bill.

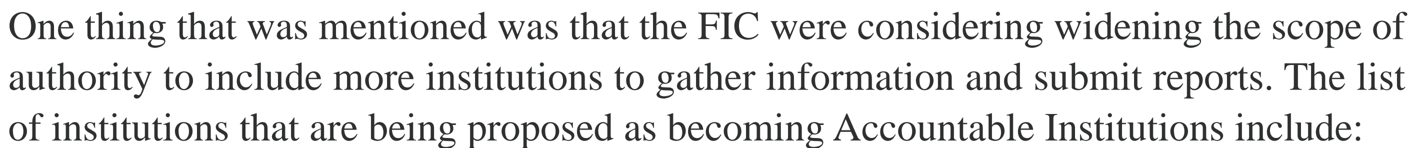
Once signed into law by the President, the Minister of Finance will choose an effective date for the Act which provides time for the FIC to develop guidance notes prior to implementation. As it stands the effective date is likely to be in February 2017. It was also confirmed that enforcement and inspections would be based on the current version of the Act and Regulations for a time after the effective date to allow for implementation by those affected. It was also mentioned that 'cross border transactions' reporting and monitoring will possibly launch in 2017.

The main changes to be implemented by the Bill revolve around the client verification process and the internal rules with a drive to a "risk based approach." This approach will require a complete replacement of most entity's client verification and source of funds procedures as well as their internal rules with a Risk Management Compliance Programme (RMCP).

The key element to a risk based approach is to ensure that institutions have a clear understanding of the money laundering risk posed by each client. Given that these amount to some drastic changes, we recommend that you make use of our services to redesign the necessary documents.

The Bill will also de-criminalise some aspects of non-compliance by introducing administrative remedies; meaning enforcement action will be taken by the Financial Services Board, Reserve Bank, FIC or other similar relevant agencies.

We should also remind you to register on the goAML system if you haven't already (and you're an Accountable or Reporting Institution). The requirement was issued as a Directive and as such is law and non-compliance is subject to a penalty.



One thing that was mentioned was that the FIC were considering widening the scope of authority to include more institutions to gather information and submit reports. The list of institutions that are being proposed as becoming Accountable Institutions include:

- Short-term insurers (we are sure if insurers are "in" the effect will be felt by all players in the sector);
- Professional Accountants;
- Dealers in high value goods (although no definition of what is to be viewed as high value). Such dealers include motor vehicles, precious metals/stones and coins; and
- Virtual currency exchanges.

Associations or other bodies which represent any of the industries being looked at are being invited to contact the FIC to discuss the proposals further. If you have a view we would encourage you to get involved via your own associations e.g. SAUMA, SAIA, FIA rather than complain at the new levels of regulation later.

To see the full Notice and the list of proposed additions click here.

FIC Sanctions (as reported in the Dispatch newspaper)

"Grahamstown-headquartered bank GBS Mutual has been slapped with a R500,000 fine after the SA Reserve Bank (SARB) found "weaknesses" in its controls intended to combat money laundering and financing of terrorism.

The SARB imposed the "administrative sanction" after a routine inspection under the Financial Intelligence Centre Act (FICA) to check if banks have the appropriate measures in place.

Stern Sanction: The South African Reserve Bank (SARB) handed down a R500,000 fine to GBS Mutual Bank, which has its head office in Grahamstown. GBS was one of five banks fined by the SARB for problems with their FICA 'know your customer' controls.

There was no suggestion that GBS had facilitated transactions involving money laundering or the finance of terrorism, the SARB said.

GBS has accepted the sanction, the bank said, and has already accounted for the fine in its annual financial statements for the year ended 31 March which were approved at the annual general meeting in July.

SARB has imposed stiff penalties on other banks for similar lapses.

Investec was fined R20 million, Standard Chartered SA R10 million, Bank of Athens R3 million and Habib Overseas Bank R1 million."

FROM THE FAIS OMBUD

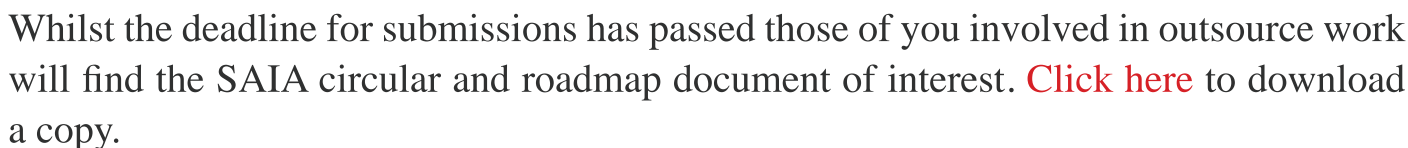
The results of an appeal board decision on a second application to appeal a decision by the Ombud back in 2012 involving ACS Financial Management.

This is a technical matter the nuances of which may be lost to many but worth a read for those that like the technicalities.

Click here to download the determination.

FROM SAIA

The SAIA have been working alongside the FIA and SAUMA with the FSB on the issue of recording, maintaining and access to data within the short-term industry with specific focus on the outsourcing of work to either intermediaries or UMAs. The latest exercise was a survey of SAIA members that were asked to provide their information as to how they address these issues within their own company. The end result of this and related exercises and discussions will be an industry standard being applied for "data exchange framework.



Whilst the deadline for submissions has passed those of you involved in outsource work will find the SAIA circular and roadmap document of interest. Click here to download a copy.

FROM THE INSTITUTE OF DIRECTORS (IOD)

A recent governance alert from the IOD dealing with proposed Mandatory Audit Firm Rotation:

> ***"We bring to your attention the recent announcement by the Independent Regulatory Board for Auditors (IRBA) of its decision to introduce Mandatory Audit Firm Rotation (MAFR) in order to further strengthen auditor independence, enhance investor protection and at the same time increase access to the audit market as well as promote transformation in the profession in South Africa. It should be noted that this decision, as indicated by IRBA, does not exclude the possible inclusion of additional measures such as mandatory audit tendering or joint audits, as a combination with firm rotation, in certain circumstances. IRBA has also indicated that it intends to consult on the implementation of these new requirements with the public prior to MAFR coming into effect.***
>
> ***Whilst the IoDSA and the King Committee fully support the principle of auditor independence, our views on MAFR and the consequences (unintended or otherwise) thereof are contained in the King III Practice Note on Mandatory Audit Firm Rotation issued in November 2013. The IoDSA and the King Committee will be formally engaging with IRBA on this matter going forward."***

For the full IRBA media release click here.

We suggest that you discuss this matter with your own auditors to see what effect this may have.

INTERESTING THINGS WE HAVE READ

INSURANCE GATEWAY

Treating customers fairly raises its presence in a Short-term Ombud matter: An article from Moonstone showing how TCF principles can be applied where the policy wording seems so straightforward. Click here to read more.

Placing business overseas: A Moonstone article highlighting the rules to be followed when wanting to place business overseas. The link also provides the facility to download the applicable regulations. Click here to read more.

Surviving as a traditional intermediary in a disrupted environment: An article by Jonathan Rosenberg of Renasa is worth a read. Click here to read more.

Insurance Brokers and Professional Indemnity Insurance: An article by Fatima Ebrahim of Leppard & Associates (Pty) Limited on the aspects to consider when an intermediary effects PI cover. While you may think you know as an intermediary what to consider – have a read! Click here to read more.

And then read this related article by Dylan Nel of Camargue. Click here to read more.

80 hackers expected at game-changing Santam Blockchain Hackathon: This is what "outside the box" is all about – how to beat the system but managed by the system. Our minds are already racing to do a "FAIS Hacker" version to see how FSPs look to circumvent the system. Click here to read more.

A related article from FA News around the Blockchain technology – interesting even if you think you know what is going on out there.

Click here to read the full article which continues on their website.

FA NEWS

RDR is worth the price of admission: Best you read everything you can on the impact of RDR so you are as ready as you can be once it starts to be rolled out.

Click here to read the full article which continues on their website.

And here is another one:

Click here to read the full article which continues on their website.

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COVER

Short term Insurance in South Africa: We mentioned this book, by Gareth Stokes and Liz Still, last month. Here is some more background the on the book complete with an interview with Gareth. Click here to read more.

Camargue launches new eBook: Quick Guide to Liability Insurance is the third eBook to come out of the Camargue stable and this 52-page handbook is cover to cover liability content developed for the education and enrichment of the broker offering.

Click here to read more.

Dynamic Days and Intermediaries: Technology and regulations were once again at the centre of the discussion at this year FIA Roadshow held across the country under the theme 'Dynamic Days'. The most interesting comment in this article is the percentage of business controlled by the direct marketer – Really? We need more detail on this stat.

Click here to read more.

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Layout and design by Dung Beetle Creative Studio - www.dungbeetlecs.co.za